



*Legal Guide LT-3*

## **RENTAL HOUSING & REPAIRS: WHO'S RESPONSIBLE FOR WHAT & HOW TO GET REPAIRS MADE**

*September 2009*

Landlords and tenants each are responsible for certain kinds of repairs to rental units, although the landlord ultimately is responsible for assuring that a rental unit is "habitable." "Habitable" means that a rental unit –

- Is fit for occupation by human beings, and
- Substantially meets the standards of state and local building and health codes that materially affect tenants' health and safety.<sup>1</sup>

### **What kinds of repairs must a landlord make?**

Before renting a unit, the landlord must make the rental unit habitable (fit to live in). While the unit is being rented, the landlord must repair problems which make it **un**inhabitable (unfit to live in).<sup>2</sup>

The landlord has this duty to repair because of the California Supreme Court's decision in a case called *Green v. Superior Court*.<sup>3</sup> The court held that all residential leases and rental agreements contain an "implied warranty of habitability." The implied warranty of habitability requires landlords to repair substantial defects in the rental unit and substantial failures to comply with state and local building and health codes.<sup>4</sup>

Generally, landlords also must do maintenance work necessary to keep the unit liveable.<sup>5</sup> However, a landlord is not responsible for repairing damages which were caused by the tenant or the tenant's family, guests or pets.<sup>6</sup>

### **What kinds of conditions make a rental unit legally uninhabitable?**

A dwelling may be considered uninhabitable if it substantially lacks any of the following:<sup>7</sup>

- Effective waterproofing and weather protection of the roof and exterior walls, including unbroken windows and doors.
- Plumbing facilities in good working order, including hot and cold running water, connected to a sewage disposal system.
- Gas facilities in good working order.
- Heating facilities in good working order.

- An electric system, including lighting, wiring and equipment, which is in good working order.
- Clean and sanitary buildings, grounds and appurtenances (for example, a garden or a detached garage) which are free from debris, filth, rubbish, garbage, rodents and vermin.
- Adequate trash receptacles in good repair.
- Floors, stairways and railings in good repair.

In addition to these requirements, each rental unit must have all of the following:

- A working toilet, wash basin, and bathtub or shower; the toilet and bathtub or shower must be in a room which is ventilated and allows for privacy.
- A kitchen with a sink, which cannot be made of an absorbent material such as wood.
- Natural lighting in every room through windows or skylights; windows in each room must be able to open at least halfway for ventilation, unless a fan provides mechanical ventilation.
- Safe fire or emergency exits leading to a street or hallway; stairs, hallways and exits must be kept litter-free; and, storage areas, garages and basements must be kept free of combustible materials.<sup>8</sup>
- Operable deadbolt locks on the main entry doors of rental units, and operable locking or security devices on windows.<sup>9</sup>
- Working smoke detectors in all units of multi-unit buildings, such as duplexes and apartment complexes. Apartment complexes also must have smoke detectors in common stairwells.<sup>10</sup>

For example, it is the landlord's responsibility to fix a leaking roof because the implied warranty of habitability requires that the roof not leak. But the implied warranty of habitability does not require the landlord to repair damages that were caused by the tenant's family, guests or pets.<sup>11</sup>

### **What kinds of repairs must a tenant make?**

In general, tenants are required by law to take reasonable care of their rental units and common areas, such as hallways and outside areas. This means that a tenant must keep those areas clean and undamaged. Tenants also must repair all damages which result from their neglect or abuse, and must repair damages caused by anyone for whom they are responsible, such as family, guests or pets.<sup>12</sup>

In addition, the law specifically lists certain things that a tenant must do to keep the rental unit livable. They include:

- Keep the premises "as clean and sanitary as the condition of the premises permits."
- Use and operate gas, electrical and plumbing fixtures properly. (Examples of improper use include overloading electrical outlets, flushing large, foreign objects down the toilet, and allowing any gas, electrical or plumbing fixture to become filthy.)
- Dispose of trash and garbage in a clean and sanitary manner.

- Not destroy, damage, or deface the premises, or allow anyone else to do so.
- Not remove any part of the structure, dwelling unit, facilities, equipment or appurtenances, or allow anyone else to do so.
- Use the premises as a place to live, and use the rooms for their intended purposes. For example, the bedroom must be used as a bedroom and not as a kitchen.<sup>13</sup>
- Notify the landlord when deadbolt locks and window locks or security devices do not operate properly.<sup>14</sup>

However, a landlord may agree in writing to clean the rental unit and dispose of the trash.<sup>15</sup>

If the tenant violates these requirements in a minor way, the landlord is still responsible for providing a habitable dwelling, and may be prosecuted for violating housing standards. But if the tenant's failure has either substantially caused the unlivable condition to occur, or has substantially interfered with the landlord's ability to repair the unlivable condition, the landlord has no duty to repair the condition.<sup>16</sup> The tenant also cannot withhold rent or sue the landlord for violating the implied warranty of habitability if the tenant was responsible for creating the problem.<sup>17</sup>

### **Who is responsible for other kinds of repairs, such as repairs to a refrigerator or a washing machine?**

As to less serious repairs, the rental agreement or lease may provide for either the tenant or the landlord to fix a particular item. Items covered by such an agreement – for example, refrigerators, washing machines, parking places or swimming pools – are usually considered "amenities," and their absence does not make a dwelling unit unfit for living. Such agreements are usually enforceable in accord with the intent of the parties.

### **Can a landlord and tenant agree that the tenant will make all repairs?**

Yes. The landlord and the tenant may agree in the rental agreement or lease that the tenant is responsible for **all** repairs and maintenance in exchange for a lower rent.<sup>18</sup> Such an agreement must be made in good faith, and should be signed by the tenant only if he or she is able to make all the necessary repairs.

### **How can a tenant go about getting repairs made?**

If a tenant believes that his or her rental unit needs repairs, and that the repairs are the landlord's responsibility under the implied warranty of habitability (see page 1), the tenant should notify the landlord. Since rental units are a business investment, most landlords want to keep them safe, clean, attractive and in good repair.

It's best for the tenant to notify the landlord of damage or defects by **both** a telephone call **and** a letter. The tenant should specifically describe the damage or defects and the required repairs in both the phone call and the letter. The tenant should date the letter and keep a copy for his or her records.

The tenant should send the letter to the landlord, manager or agent by certified mail (return receipt requested). Or, the tenant (or a friend) may personally deliver the letter to the landlord, manager or agent and get a receipt showing that the notice was received. The tenant should keep a copy of the letter and the receipt, or some other evidence that the letter was delivered. The copy and the receipt will be proof that the tenant notified the landlord, and also proof of what the letter said.

If the landlord doesn't make the requested repairs, and doesn't have a good reason for not doing so, the tenant may have one of several remedies, depending on the seriousness of the defects. *Each of these remedies has its own requirements and risks, so the tenant should use them carefully.*

### **The "repair and deduct" remedy.**

The "repair and deduct" remedy allows tenants to deduct money from their rent to pay for repair of conditions that are covered by the implied warranty of habitability. These include substandard conditions that affect the tenant's health and safety, and that substantially breach the implied warranty of habitability.<sup>19</sup> Examples might include a leak in the roof during the rainy season, no hot running water, a gas leak, or a defective sewer system.

As a practical matter, the repair and deduct remedy allows a tenant to repair serious conditions without filing a lawsuit against the landlord. Because this remedy involves legal technicalities, the tenant may want to talk to a lawyer, legal aid society or tenant's association before using it.

The basic requirements and steps for using the repair and deduct remedy are:

1. The defects must be serious and render the premises untenantable - i.e. dangerous to one's health and safety.<sup>20</sup>
2. The repairs cannot cost more than one month's rent.
3. Tenants cannot use the repair and deduct remedy more than twice in any twelve-month period.
4. The tenant or the tenant's family, guests or pets must not have caused the defects that require repair.
5. The tenant must inform the landlord, either orally or in writing, of the repairs that are needed. (See "How can a tenant go about getting repairs made?")
6. The tenant must give the landlord a reasonable period of time to make the needed repairs.

What is "reasonable" depends on the defects and the type of repairs that are needed. The law usually considers 30 days to be reasonable, but a shorter period may be considered reasonable, depending on the circumstances. For example, if the furnace is broken and it is very cold outdoors, two days may be considered reasonable (assuming that a qualified repair person is available within that time period).

7. If the landlord doesn't make the needed repairs within a reasonable period of time, the tenant may either make the repairs, or hire someone to do them, and then deduct the cost from the rent when it is due. The tenant should be sure to keep all receipts for the repairs.<sup>21</sup>

It's a good idea, but not a legal requirement, for the tenant to give the landlord a written notice that explains why the tenant hasn't paid the full amount of the rent. The tenant should keep a copy of this notice.

**Risks:** The defects may not be serious enough to violate the implied warranty of habitability. In that event, the landlord can sue the tenant to recover the money deducted from the rent, or can file an eviction action based on nonpayment of rent. If the tenant deducted money for repairs not covered by the remedy, or didn't give the landlord proper notice or a reasonable time to make repairs, the court can order the tenant to pay

the full rent (even though the tenant paid for the repairs), or can order that the eviction proceed.

The landlord may try to evict the tenant or raise the rent to punish the tenant for using the repair and deduct remedy. This action is known as a "retaliatory eviction." The law prohibits this type of eviction, with some limitations.<sup>22</sup>

### **The "abandonment" remedy.**

The law allows a tenant to abandon (leave) a rental unit that is uninhabitable. That is, the tenant can abandon the unit if it has substandard conditions that affect the tenant's health and safety and that substantially breach the implied warranty of habitability.<sup>23</sup>

The abandonment remedy is basically an alternative to the repair and deduct remedy, and has most of the same basic steps. If the repairs that are needed are so serious that they would cost more than one month's rent, the tenant might choose to leave the rental unit rather than using the repair and deduct remedy.

If a tenant uses the abandonment remedy properly, then the tenant is not responsible for paying further rent once he or she has abandoned the rental unit.<sup>24</sup>

The basic requirements and steps for lawfully abandoning a rental unit are:

1. The defects must be serious and directly related to the tenant's health and safety.<sup>25</sup>
2. The tenant or the tenant's family, guests or pets must not have caused the defects that require repair.<sup>26</sup>

If the tenant or people for whom the tenant is responsible caused the defects, the tenant cannot use this remedy.

3. The tenant must inform the landlord either orally or in writing of the repairs that are needed. (See "How can a tenant go about getting repairs made?")
4. The tenant must give the landlord a reasonable period of time to make the needed repairs.

What is "reasonable" depends on the defects and the type of repairs that are needed. The law usually considers 30 days to be reasonable, but a shorter period may be considered reasonable, depending on the circumstances. For example, if tree roots block the main sewer drain and none of the toilets or drains work, a reasonable period might be as little as one or two days.

5. If the landlord doesn't make the needed repairs within a reasonable period of time, the tenant should notify the landlord in writing of the tenant's reasons for moving and then actually move out. The tenant should return all of the rental unit's keys to the landlord. The notice should be mailed or delivered as explained under "How can a tenant go about getting repairs made?". The tenant should keep a copy of the notice.

While the law does not require the tenant to notify the landlord in writing of the tenant's reasons for moving, it is a good idea to do so. The tenant's letter may discourage the landlord from suing the tenant to collect additional rent or other damages. A letter also documents the tenant's reasons for moving in the event of a later lawsuit, so the tenant should be sure to keep a copy. If possible, the tenant should take videos or pictures of the

defective conditions, or have local health or building officials inspect the rental before the tenant moves. The tenant should keep a copy of the written notice and any inspection reports and photographs or videos.

**Risks:** The defects may not affect the tenant's health and safety seriously enough to justify abandoning the rental unit. The landlord may sue the tenant to collect additional rent or damages.

### **The "rent withholding" remedy.**

Tenants have another option for getting repairs made – the "rent withholding" remedy. By law, a tenant is allowed to withhold (stop paying) some or all of the rent if the landlord does not fix serious defects that violate the implied warranty of habitability.<sup>27</sup> The defects must be serious ones that threaten the tenant's health or safety.<sup>28</sup>

1. In order for the tenant to withhold rent, the defects or repairs that are needed must be at least as serious as those that would justify using the repair and deduct and abandonment remedies.<sup>29</sup> The defects that were serious enough to justify withholding rent in *Green v. Superior Court*,<sup>30</sup> are listed below as examples:

- Collapse and nonrepair of the bathroom ceiling.
- Continued presence of rats, mice and cockroaches.
- Lack of any heat in four of the apartment's rooms.
- Plumbing blockages.
- Exposed and faulty wiring.
- An illegally installed and dangerous stove.

In the *Green* case, **all** of these defects were present, and there also were many violations of the local housing and building codes.

2. The tenant, or the tenant's family, guests or pets must not have caused the defects that require repair.

If the tenant or people for whom tenant is responsible caused the defects, the tenant cannot use this remedy.

3. The tenant must inform the landlord either orally or in writing of the repairs that are needed. (See "How can a tenant go about getting repairs made?")

4. The tenant must give the landlord a reasonable period of time to make the needed repairs.

What is "reasonable" depends on the defects and the type of repairs that are needed.

5. If the landlord doesn't make the needed repairs within a reasonable period of time, the tenant can withhold some or all of the rent. The tenant can continue to withhold the rent until the landlord makes the repairs.

*How much rent can the tenant withhold?* While the law does not offer a clear test for determining a reasonable amount for the tenant to withhold, judges typically use one of the following methods. These methods are offered as examples:

*Percentage reduction in rent:* The percentage of the rental unit that is uninhabitable is determined, and the rent is reduced by that amount. For example, if one of a rental unit's four rooms is uninhabitable, the tenant could withhold 25 percent of the rent. The tenant would have to pay the remaining 75 percent of the rent. Most courts use this method.

*Reasonable value of rental unit:* The value of the rental unit in its defective state is determined, and the tenant withholds that amount. The tenant would have to pay the difference between the rental unit's fair market value (usually, the rent stated in the rental agreement or lease) and the rental unit's value in its defective state.<sup>31</sup>

6. The tenant should save the withheld rent money and **not spend it**. The tenant probably will have to pay the landlord some or all of the rent once the repairs are made, or as ordered by a court.

In addition, if the tenant withholds rent, the tenant should put the rent money into a special bank account (called an escrow account). The tenant should notify the landlord in writing that the rent money has been deposited in the escrow account, and explain why the tenant has done this.

Depositing the withheld rent money in an escrow account is not required by law, but is a very good thing to do for three reasons.

First, depositing the money in an escrow account will assure that the tenant will have the money to pay reasonable rent once the repairs are made, or as ordered by the court. Rent withholding cases often wind up in court, as explained under "Risks" below. Usually, the judge will require the tenant to pay the landlord some reduced rent based on the value of the rental unit with all of its defects. Rarely does a judge excuse payment of all rent.

Second, putting the rent money in an escrow account proves to the court that the tenant didn't withhold the rent just to avoid paying the rent. If there is a court hearing, the tenant should bring rent receipts or other evidence to show that he or she has been reliable in paying rent in the past.

Third, most legal aid societies and lawyers will not represent a tenant who has not deposited the withheld rent money in an escrow account.

Hopefully, the tenant and the landlord will be able to agree on the amount of rent that is reasonable for the time when the rental unit needed repairs. If the tenant and the landlord can't agree on a reasonable amount, the dispute will have to be decided in court, or resolved in an arbitration or mediation proceeding.

In order to prove a violation of the implied warranty of habitability, the tenant will need evidence of the defects that need repair. If the tenant goes to court, videos, photographs, witnesses, and copies of letters informing the landlord of the problem can be very helpful.

Before the tenant stops paying rent, it is a good idea to check with a legal aid society, lawyer, or tenant organization to help determine if this is the appropriate remedy.

**Risks:** The defects may not be serious enough to threaten the tenant's health or safety. When the tenant withholds rent, the landlord may give the tenant an eviction notice (a three-day notice to pay the rent or leave). If the tenant refuses to pay, the landlord will probably go to court to evict the tenant. Then the tenant will have to prove to the court that the landlord violated the implied warranty of habitability.

If the tenant wins the case, the landlord will be ordered to make the repairs, and the tenant will be ordered to pay a reasonable rent, which ordinarily must be paid within a few days. If the tenant wins but doesn't pay the amount of rent ordered when it is due, the judge will enter a judgment for the landlord and the tenant probably will be evicted. If the tenant loses, he or she will have to pay the rent, probably will be evicted, and may be ordered to pay the landlord's attorney's fees.

Another risk of using this remedy is that if the tenant does not have a lease, the landlord may ignore the tenant's notice of defective conditions and seek to remove or punish the tenant by giving him or her a 30-day notice to move. This may amount to a "retaliatory eviction." The law prohibits this type of eviction, with some limitations.<sup>32</sup>

### **Lawsuit for damages as a remedy.**

The remedies of repair and deduct, abandonment, and rent withholding allow a tenant in a rental unit with serious habitability defects to take action against the landlord without filing a lawsuit. Arbitration and mediation can also be used to resolve these disputes.

Alternatively, the tenant may file a lawsuit seeking money damages if the landlord doesn't repair serious defects in a timely manner.<sup>33</sup> If the tenant wins the lawsuit, the court may award the tenant actual damages, as well "special damages" in an amount ranging from \$100 to \$1,000. Special damages are costs that the tenant incurs, such as the cost of a motel room, because the landlord failed to repair the defects in the rental unit.

The court also may order the landlord to abate (stop or eliminate) a nuisance and to repair any substandard condition which significantly affects the health and safety of the tenant.<sup>34</sup> For example, the court could order a landlord to fix a leaky roof, and could retain jurisdiction over the case until the roof is fixed.

In order for a tenant to win such a lawsuit, all of the following criteria must be met:<sup>35</sup>

- The unit must have serious habitability defects – that is, it must substantially lack any of the minimum requirements for habitability. (See “What kinds of conditions make a rental unit legally uninhabitable?”)
- A housing inspector must inspect the premises and notify the landlord or the landlord's agent, in writing, of the landlord's obligation to repair the substandard conditions.
- The substandard conditions must continue to exist for more than 60 days after the housing inspector issued the written notice, and the landlord must not have "good cause" for failing to make the repairs.
- The substandard conditions must not have been caused by the tenant or the tenant's family, guests or pets.

In addition to recovering money damages, the party who wins the lawsuit is entitled to recover his or her costs of bringing the suit (for example, court filing fees).<sup>36</sup> Some rental agreements contain provisions that award attorney's fees to the landlord if the landlord wins a lawsuit against the tenant. Even if the agreement



doesn't say it, those same provisions also apply if the tenant sues the landlord and wins. This means that the landlord could be required to reimburse the tenant for some or all of the cost of hiring a lawyer. Alternately, if the landlord wins, the tenant could be required to pay his or her attorney fees.<sup>37</sup>

The tenant can sue in small claims or superior court, depending on the amount of money sought in the lawsuit. Before filing a lawsuit the tenant should take all of these basic steps:

- The tenant should notify the landlord in writing about the conditions that require repair. (See "How can a tenant go about getting repairs made?") The rental unit must have serious habitability defects not caused by the tenant's family, guests or pets.
- The notice should specifically describe the problem and the repairs that are required.
- The notice should give the landlord a reasonable period of time to make the repairs.
- If the landlord doesn't make the repairs in a reasonable time, the tenant should contact the local city or county building department, health department, or local housing agency to request an inspection.
- The housing inspector must inspect the rental unit.
- The housing inspector must give the landlord written notice of the repairs that are required.
- The substandard conditions must continue to exist for more than 60 days after the housing inspector issues the notice.
- The tenant should gather evidence of the substandard conditions (for example, photographs or videos, statements of witnesses, inspection reports), so that the tenant can prove his or her case in court.
- The tenant should discuss the case with a lawyer, legal aid society, tenant program or housing clinic, or small claims court advisor.
- The tenant must understand what the lawsuit is likely to accomplish, and also the risks involved.

### **Resolving complaints out of court.**

Before filing suit, the tenant should consider trying to resolve the complaint out of court, either through personal negotiation or a dispute resolution program that offers mediation or arbitration of landlord-tenant disputes. If the tenant and the landlord agree, a neutral third party will work with both of them to reach a solution. Dispute resolution is easier than a lawsuit, and can be inexpensive and fast. For help locating a nearby dispute resolution program, call the Department of Consumer Affairs' Consumer Information Center at (800) 952-5210.

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## ENDNOTES

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1. *Green v. Superior Court* (1974) 10 Cal.3d 616, 637-638 [111 Cal.Rptr. 704, 719]; Civil Code sections 1941, 1941.1.
  2. Civil Code section 1941.
  3. *Green v. Superior Court* (1974) 10 Cal.3d 616 [111 Cal.Rptr. 704].
  4. *Green v. Superior Court* (1974) 10 Cal.3d 616, 637-638 [111 Cal.Rptr. 704, 718-719].
  5. Civil Code section 1941.
  6. Civil Code sections 1929, 1941.2(a)(4).
  7. Civil Code section 1941.1.
  8. Health and Safety Code sections 17900-17995.
  9. Civil Code section 1941.3.
  10. Health and Safety Code section 13113.7.
  11. Civil Code sections 1929, 1941.2.
  12. Civil Code sections 1929, 1941.2.
  13. Civil Code section 1941.2.
  14. Civil Code section 1941.3(b).
  15. Civil Code section 1941.2(b).
  16. Civil Code section 1941.2(a).
  17. Civil Code sections 1929, 1942(c); see Brown, Warner & Portman, *The California Landlord's Law Book, Vol. I: Rights & Responsibilities*, pages 11/8 (NOLO Press 11<sup>th</sup> Ed. 2005).
  18. Civil Code section 1942.1.
  19. Civil Code section 1942.
  20. There is, however, no known case authority which has made this interpretation. See 1 Friedman, et al., *California Practice Guide, Landlord-Tenant*, § 3.116 (The Rutter Group 2008).
  21. See Civil Code 1942.
  22. Civil Code section 1942.5.
  23. Civil Code section 1942. 1 Friedman, et al., *California Practice Guide, Landlord-Tenant*, §§ 3:115 - 3:116, 3:126 (The Rutter Group 2008).
  24. Civil Code section 1942(a).
  25. Civil Code section 1942(a).
  26. Civil Code section 1942(c).
  27. *Green v. Superior Court* (1974) 10 Cal.3d 616 [111 Cal.Rptr. 704].
  28. See Civil Code section 1941.1.
  29. Moskowitz and Warner, *California Tenants' Rights*, page 7/9 (NOLO Press 2001).
  30. *Green v. Superior Court* (1974) 10 Cal.3d 616 [111 Cal.Rptr. 704].
  31. See discussion in Brown and Warner, *The California Landlord's Law Book, Vol. I: Rights & Responsibilities*, page 11/2 (NOLO Press 2001) and Moskowitz and Warner, *California Tenants' Rights*, page 7/10 (NOLO Press 2001).
  32. Civil Code section 1942.5; Brown and Warner, *The California Landlord's Law Book, Vol. I: Rights & Responsibilities*, pages 15/2-15/3 (NOLO Press 2001).
  33. Civil Code section 1942.4.
  34. Civil Code sections 1942.4(a),(c).
  35. Civil Code section 1942.4(a).
  36. Civil Code section 1942.4(b).
  37. Civil Code section 1717.